

Department of Defense

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other Federal agencies, and any other relevant factors.

(b) The Secretary may determine the effective date of newly set or adjusted band rate ranges. Established rate ranges will be reviewed for possible adjustment at least annually.

(c) The Secretary may establish different rate ranges and provide different rate range adjustments for different pay bands.

(d) The Secretary may adjust the minimum and maximum rates of a pay band by different percentages.

§ 9901.323 Eligibility for pay increase associated with a rate range adjustment.

(a) Employees with a current rating of record above “unacceptable” and employees who do not have a current rating of record for the most recently completed appraisal period will receive a percentage increase in basic pay equal to the percentage by which the minimum of their rate range is increased. This section does not apply to employees receiving a retained rate under § 9901.355.

(b) Employees with a current rating of record of “unacceptable” will not receive a pay increase under this section.

LOCAL MARKET SUPPLEMENTS

§ 9901.331 General.

The basic pay ranges established under §§ 9901.321 through 9901.323 may be supplemented in appropriate circumstances by local market supplements, as described in §§ 9901.332, 9901.333, and 9901.334. These supplements are expressed as a percentage of basic pay and are set and adjusted as described in § 9901.333.

§ 9901.332 Local market supplements.

(a) The Secretary may establish local market supplements that apply in specified local market areas whose boundaries are set at the Secretary’s sole and exclusive discretion, subject to paragraph (b) of this section and § 9901.105(d)(4). Local market supplements apply to employees whose official duty station is located in the given local market area. The Secretary may establish standard or targeted local market supplements.

(b)(1) The establishment or modification of geographic area boundaries for standard local market supplements by the Secretary will be effected by regulations which, notwithstanding 5 U.S.C. 553(a)(2), will be promulgated in accordance with the notice and comment requirements of 5 U.S.C. 553. As provided by the non-waived provisions of 5 U.S.C. 5304(f)(2) (modified here to apply to DoD regulations issued under the authority of this paragraph), judicial review of any such regulation is limited to whether or not it was promulgated in accordance with such requirements.

(2) Notwithstanding paragraph (b)(1) of this section, the Secretary’s establishment of a standard local market area boundary or boundaries identical to those used for locality pay areas established under 5 U.S.C. 5304 does not require separate DoD regulations.

(c) Local market supplements are considered basic pay for only the following purposes:

(1) Retirement deductions, contributions, and benefits under 5 U.S.C. chapter 83 or 84;

(2) Life insurance premiums and benefits under 5 U.S.C. chapter 87;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V, or similar payments under other legal authority, including this subpart;

(4) Severance pay under 5 U.S.C. 5595;

(5) Cost-of-living allowances and post differentials under 5 U.S.C. 5941;

(6) Overseas allowances and differentials under 5 U.S.C. chapter 59, subchapter III, to the extent authorized by the Department of State;

(7) Recruitment, relocation, and retention incentives, supervisory differentials, and extended assignment incentives under 5 U.S.C. chapter 57, subchapter IV, and 5 CFR part 575;

(8) Lump-sum payments for accumulated and accrued annual leave under 5 CFR 550, subpart L;

(9) Determining the rate of basic pay upon conversion to the NSPS pay system as provided in § 9901.373(b);

(10) Other payments and adjustments authorized under this subpart as specified by implementing issuances;

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(11) Other payments and adjustments under other statutory or regulatory authority for which locality-based comparability payments under 5 U.S.C. 5304 are considered part of basic pay; and

(12) Any provisions for which DoD local market supplements are treated as basic pay by law.

§ 9901.333 Setting and adjusting local market supplements.

(a) Within his or her sole and exclusive discretion, the Secretary may, subject to § 9901.105(d)(3), set and adjust local market supplements. In determining the amounts of the supplements, the Secretary will consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, allowances and differentials under 5 U.S.C. chapter 59, and any other relevant factors.

(b) The Secretary may determine the effective date of newly set or adjusted local market supplements. Established supplements will be reviewed for possible adjustment at least annually in conjunction with rate range adjustments under § 9901.322.

§ 9901.334 Eligibility for pay increase associated with a supplement adjustment.

(a) When a local market supplement is adjusted under § 9901.333, employees to whom the supplement applies with a current rating of record above “unacceptable,” and employees who do not have a current rating of record for the most recently completed appraisal period, will receive any pay increase resulting from that adjustment.

(b) Employees with a current rating of record of “unacceptable” will not receive a pay increase under this section.

PERFORMANCE-BASED PAY

§ 9901.341 General.

Sections 9901.342 through 9901.345 describe the performance-based pay that is part of the pay system established under this subpart. These provisions are designed to provide the Secretary with the flexibility to allocate available funds to employees based on individual performance or contribution or team or organizational performance as

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a means of fostering a high-performance culture that supports mission accomplishment.

§ 9901.342 Performance payouts.

(a) *Overview.* (1) The NSPS pay system will be a pay-for-performance system and, when implemented, will result in a distribution of available performance pay funds based upon individual performance, individual contribution, team or organizational performance, or a combination of those elements. The NSPS pay system will use a pay pool concept to manage, control, and distribute performance-based pay increases and bonuses. The performance payout is a function of the amount of money in the performance pay pool and the number of shares assigned to individual employees.

(2) The rating of record used as the basis for a performance pay increase is the one assigned for the most recently completed appraisal period, except that if an appropriate rating official determines that an employee's current performance is inconsistent with that rating, that rating official may prepare a more current rating of record, consistent with § 9901.409(b). Unless otherwise provided in implementing issuances, if an employee is not eligible to have a rating of record for the current rating cycle for reasons other than those identified in paragraphs (f) and (g) of this section, such employee will not be eligible for a performance payout under this part.

(3) Pay pools will be managed by a pay pool manager and/or pay pool panel. The Secretary will define in implementing issuances the responsibilities of pay pool managers and pay pool panels to include the review of proposed rating and share assignments to ensure that employees are treated fairly and consistently and in accordance with the merit system principles.

(b) *Performance pay pools.* (1) The Secretary will issue implementing issuances for the establishment and management of pay pools for performance payouts.

(2) The Secretary may determine a percentage of pay to be included in pay pools and paid out in accordance with accompanying implementing issuances as—